

**Objection to the Issuance of Permit Approval, Fall Creek Regional Waste District,  
Pendleton, Indiana.  
1999 OEA 40 (99-W-J-2204)**

---

**OFFICIAL SHORT CITATION NAME:** When referring to 1999 OEA 40, cite this case as  
*Fall Creek Regional Waste District, 1999 OEA 40.*

**TOPICS:**

Motions for Reconsideration of Denial of Review  
water pollution treatment/control facility  
environmental concerns  
technical deficiencies  
environmental review process  
public hearing  
notice  
proposed project  
grant of a license for the construction, installation, or modification of sewers and appurtenances  
substantial prejudice  
good faith efforts to identify and notify potentially affected  
environmental defect or deficiency

**PRESIDING JUDGE:**

Penrod

**PARTY REPRESENTATIVES:**

Objectors: Robert G. Forbes, Esq.  
James Steven Doty, *pro se*  
Donald and Cynthia White, *pro se*  
Respondent: Kathleen G. Lucas, Esq.; L. Parvin Price, Esq.  
Bose McKinney & Evans LLP  
IDEM: Margaret L. Felton, Esq.

**ORDER ISSUED:**

August 9, 1999

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

---



**Objection to the Issuance of Permit Approval, Fall Creek Regional Waste District,  
Pendleton, Indiana.  
1999 OEA 40 (99-W-J-2204)**

4. On March 3, 1999, and March 4, 1999, respectively, Objectors James Steven Doty and Clarence G. Hupfer filed Motions for Reconsideration of the Denial of Review.
5. Pursuant to notice to all parties, the hearing was held on July 15, 1999, on the Motions for Reconsideration.
6. The Objectors and the Whites argued that proper notice had not been given to them regarding public hearings related to the proposed project and regarding Approval No. L-0057.
7. Respondent, Fall Creek Regional Waste District, by Mr. Thomas Schubert, and by counsel, submitted Exhibits A through D, as follows:
  - Respondent's Exhibit A: IDEM Approval dated January 20, 1999, with list of approximately 700 residents to whom notice of the Approval was sent.
  - Respondent's Exhibit B: IDEM mailing dated February 25, 1999, showing 126 additional names of residents who received a supplemental mailing in the event they did not receive the January 20, 1999 approval.
  - Respondent's Exhibit C: Affidavit of Rebecca McMonigle, IDEM secretary, verifying service of Approval notifications.
  - Respondent's Exhibit D: Newspaper notices of public meetings regarding the project, and funding therefor, that is the subject of the present case.
8. Objector James Steven Doty submitted Doty Exhibit 1, consisting of a Sequence of Events and Questions, a copy of two pages of the January 20, 1999 Approval, pleadings and Order from the file, and maps sent to him by an IDEM employee.
9. The Whites submitted White Exhibit 1, consisting of Questionnaires regarding notifications and cost of the project that is the subject of Approval No. L-0057.
10. The Objectors and the Whites all testified that they received IDEM Approval No. L-0057, either from the agency or from another person, at least by April or May of 1999.
11. Because Approval No. L-0057 is a grant of a license for the construction, installation, or modification of sewers and appurtenances, it is subject to the limited notice requirements of IC 4-21.5-3-4.

**Objection to the Issuance of Permit Approval, Fall Creek Regional Waste District,  
Pendleton, Indiana.  
1999 OEA 40 (99-W-J-2204)**

12. Nonetheless, counsel for IDEM stated, and Respondent Fall Creek Regional Waste District proved, that IDEM made a good faith effort to identify and notify potentially affected persons, as required by IC 4-21.5-3-5(f).
13. No unnotified person argued or proved “substantial prejudice” by any lack of notice, as required to overcome IDEM’s good faith efforts to identify and notify potentially affected persons under IC 4-21.5-3-5(f).
14. The appearance by the Objectors and the Whites in these proceedings cures any alleged notice issues.
15. Neither the Objectors nor the Whites raised issues regarding environmental concerns or technical deficiencies in the application review process, as required by IC 4-21.5-3- 7(a).
16. The Objectors and the Whites deprived the OEA of subject matter jurisdiction over the objections because the Objections did not state facts demonstrating that they were aggrieved or adversely affected by the Order as required by IC 4-21.5-3-7 and 315 IAC 1 and because their claims were not based upon any environmental defect or deficiency in the Fall Creek Regional Waste District application, or any defect or deficiency in the IDEM review or approval process.
18. As has been held in previous OEA decisions, such Objections therefore state no claim upon which relief may be granted by the OEA.

**CONCLUSIONS OF LAW**

1. The Office of Environmental Adjudication has jurisdiction over decisions of the Commissioner of the Indiana Department of Environmental Management and the parties to this controversy, pursuant to IC 4-21.5-7.
2. This is a Final Order issued pursuant to IC 4-21.5-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
3. The Objections did not state facts demonstrating that the Objectors and the Whites are aggrieved or adversely affected by the Order , as required by IC 4-21.5-3-7 and 315 LAC 1-3- 2, nor do they demonstrate any environmental concerns or technical deficiency in the agency review process.
4. The objections state a set of facts which, even if true, would not support the relief requested.
5. The Objectors and the Whites have failed to establish jurisdiction and state a claim upon which relief may be granted by the Office of Environmental Adjudication.

**Objection to the Issuance of Permit Approval, Fall Creek Regional Waste District,  
Pendleton, Indiana.  
1999 OEA 40 (99-W-J-2204)**

**FINAL ORDER**

The Motions for Reconsideration of the Denial of Review are hereby **DENIED**, and therefore Approval No. L-0057 is hereby **UPHELD**.

You are further notified that pursuant to IC 4-21.5-7-5 the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. Therefore, this is a Final Order subject to judicial review. Consistent with the applicable provisions of IC 4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 9th day of August 1999.

Wayne E. Penrod,  
Chief Administrative Law Judge